

SCOTT N. SCHOOLS, SC SBN 9990
 United States Attorney
 JOANN M. SWANSON, CSBN 88143
 Assistant United States Attorney
 Chief, Civil Division
 MELANIE L. PROCTOR, CSBN 228971
 Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
 San Francisco, California 94102
 Telephone: (415) 436-6730
 FAX: (415) 436-6927

Attorneys for Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

| | | |
|--|---|-------------------|
| NATHANIEL SEAN BOWDEN, |) | |
| JUNELLE HARRIS, |) | No. C 07-5269 MEJ |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | ANSWER |
| |) | |
| ROBIN L. BARRETT, Field Office Director, |) | |
| USCIS San Francisco District Office; |) | |
| EMILIO T. GONZALEZ, Director, U.S. |) | |
| Citizenship and Immigration Services; |) | |
| MICHAEL CHERTOFF, Secretary, |) | |
| Department of Homeland Security; |) | |
| ROBERT S. MUELLER, Director, |) | |
| Federal Bureau of Investigations; |) | |
| MICHAEL B. MUKASEY, |) | |
| U.S. Attorney General, |) | |
| |) | |
| Defendants. |) | |

The Defendants hereby submit their answer to Plaintiffs' Complaint for a Writ of Mandamus and Declaratory and Injunctive Relief.

PRELIMINARY STATEMENT

1. Defendants admit the allegations in Paragraph One; however, Defendants deny that the I-130 is still pending. The I-130 was granted on December 20, 2006.

JURISDICTION

2. Paragraph Two consists of Plaintiffs' allegation regarding jurisdiction, to which no responsive

1 pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants
2 deny that this Court has jurisdiction under any of the provisions cited in Paragraph Two.

3 **VENUE**

4 3. Paragraph Three consists of Plaintiffs' allegations regarding venue, to which no responsive
5 pleading is required.

6 **INTRADISTRICT ASSIGNMENT**

7 4. Paragraph Four consists of Plaintiffs' allegations regarding intradistrict assignment, to which
8 no responsive pleading is required.

9 **STANDING**

10 5. Paragraph Five consists of Plaintiffs' characterization of this action for which no answer is
11 necessary; however, to the extent a response is deemed to be required, the Defendants deny the
12 allegations therein.

13 **PLAINTIFFS**

14 6. Defendants deny the allegations in Paragraph Six.

15 **DEFENDANTS**

16 7. Defendants admit the allegations in Paragraph Seven.

17 8. Defendants admit the allegations in Paragraph Eight.

18 9. Defendants admit the allegations in Paragraph Nine.

19 10. Defendants admit the allegations in Paragraph Ten.

20 11. Defendants admit the allegations in Paragraph Eleven.

21 12. Defendants deny the allegations in Paragraph Twelve.

22 13. Defendants admit the allegations in Paragraph Thirteen.

23 **FACTS**

24 14. Defendants admit the allegations in Paragraph Fourteen.

25 15. Defendants admit the allegations in Paragraph Fifteen.

26 16. Defendants admit the allegations in Paragraph Sixteen.

27 17. Defendants admit the allegations in Paragraph Seventeen.

28 18. Defendants deny the allegations in Paragraph Eighteen.

1 19. Defendants deny the allegations in Paragraph Nineteen.

2 20. Defendants admit the allegations in Paragraph Twenty.

3 21. Defendants admit the first three sentences in Paragraph Twenty-One. Defendants deny that the
4 I-130 petition is still pending.

5 22. Defendants admit the allegations in Paragraph Twenty-Two.

6 23. Defendants admit the allegations in Paragraph Twenty-Three.

7 24. Defendants admit the allegations in Paragraph Twenty-Four.

8 25. Defendants deny the allegations in Paragraph Twenty-Five.

9 26. Defendants admit the first sentence of Paragraph Twenty-Six; however, Defendants are without
10 sufficient information to admit or deny whether a response was sent.

11 27. Defendants deny the allegations in Paragraph Twenty-Seven.

12 28. Paragraph Twenty-Eight consists of Plaintiffs' characterization of this action for which no
13 answer is necessary; however, to the extent a response is deemed to be required, the Defendants deny
14 the allegations therein.

15 29. Paragraph Twenty-Nine consists of Plaintiffs' characterization of this action for which no
16 answer is necessary; however, to the extent a response is deemed to be required, the Defendants deny
17 the allegations therein.

18 30. Defendants deny the allegations in Paragraph Thirty.

19 31. Defendants are without sufficient information to admit or deny the allegations in Paragraph
20 Thirty-One, and on that basis, deny them.

21 **FIRST CAUSE OF ACTION**

22 32. Defendants re-allege and incorporate by reference the answers to the allegations set forth in
23 Paragraphs One through Thirty, inclusive, as though fully set forth herein.

24 33. Paragraph Thirty-Three consists of Plaintiffs' characterization of this action for which no
25 answer is necessary; however, to the extent a response is deemed to be required, the Defendants deny
26 the allegations therein.

27 **SECOND CAUSE OF ACTION**

28 34. Defendants re-allege and incorporate by reference the answers to the allegations set forth in

Paragraphs One through Thirty-Two, inclusive, as though fully set forth herein.

35. Paragraph Thirty-Five consists of Plaintiffs' statement of law for which no answer is necessary; however, to the extent a response is deemed to be required, the Defendants deny the allegations therein.

36. Paragraph Thirty-Six consists of Plaintiffs' characterization of this action for which no answer is necessary; however, to the extent a response is deemed to be required, the Defendants deny the allegations therein.

37. Paragraph Thirty-Seven consists of Plaintiffs' characterization of this action for which no answer is necessary; however, to the extent a response is deemed to be required, the Defendants deny the allegations therein.

PRAYER FOR RELIEF

The remaining allegations consists of Plaintiffs' prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny these paragraphs.

AFFIRMATIVE AND/OR OTHER DEFENSES

All allegations not here before specifically admitted, denied, or modified are hereby denied. For further and separate answer, Defendants allege as follows:

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action

SECOND DEFENSE

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

THIRD DEFENSE

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiffs.

FOURTH DEFENSE

At all times alleged in the complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

///

///

FIFTH DEFENSE

The Defendants are processing the applications referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

WHEREFORE, Defendants pray for relief as follows:

That judgment be entered for Defendants and against Plaintiffs, dismissing Plaintiffs' Complaint with prejudice; that Plaintiffs take nothing; and that the Court grant such further relief as it deems just and proper under the circumstances.

Dated: December 17, 2007

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

/s/

MELANIE L. PROCTOR
Assistant United States Attorney
Attorneys for Defendants